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SJC-13669

REGISTER OF DEEDS FOR NORFOLK COUNTY vs. COUNTY DIRECTOR FOR NORFOLK COUNTY & others.¹

Norfolk. December 2, 2024. - February 14, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges, Dewar, & Wolohojian, JJ.

Register of Deeds. County, Commissioners. Practice, Civil, Declaratory proceeding, Action in nature of mandamus, Injunctive relief, Summary judgment. Declaratory Relief. Mandamus. Injunction. Statute, Construction. Words, "Opinion."

Civil action commenced in the Superior Court Department on October 21, 2022.

The case was heard by Michael A. Cahillane, J., on motions for summary judgment, and a motion for reconsideration was considered by him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Joshua M.D. Segal (Scott P. Lopez also present) for the defendants.

William P. O'Donnell, pro se.

¹ County Commissioners for Norfolk County.

KAFKER, J. The plaintiff register of deeds for Norfolk County (register of deeds) commenced a lawsuit against the defendant county commissioners for Norfolk County (county commissioners) seeking declaratory, mandamus, and injunctive relief in connection with certain funding and personnel matters within the registry of deeds for Norfolk County (personnel litigation). More specifically, the plaintiff and the defendant county commissioners disagreed about hiring a new chief information officer, and the funding for that position, which resulted in a lawsuit. While that litigation was pending, the plaintiff asked the defendant county director for Norfolk County (county director)² to make a series of transfers of funds within a "main group" of the budget of the registry of deeds for Norfolk County (registry of deeds) to fund the personnel litigation, pursuant to G. L. c. 35, § 32, stating that in the plaintiff's "opinion" the transfers were of "public necessity and a matter of convenience." The county director did not approve the requests and instead asked the plaintiff to provide further justification for his opinion, which the plaintiff did not do. The plaintiff then commenced a second lawsuit, against both the defendant county commissioners and county director,

² A position appointed by the defendant county commissioners.

again seeking declaratory, mandamus, and injunctive relief (transfer request litigation). The two actions were consolidated, and the plaintiff moved for summary judgment in the transfer request litigation. After a hearing, a judge of the Superior Court allowed the plaintiff's motion for summary judgment on the basis that, pursuant to G. L. c. 35, § 32, the transfer of such funds within a "main group" of the registry of deeds's budget "may be made by the authorized official . . . whenever in his opinion public necessity and convenience so requires" and the defendants did not have the authority to deny the requested transfers. The defendants timely appealed. We affirm.

1. Facts and procedural history. a. Personnel litigation. On July 14, 2021, the plaintiff register of deeds brought suit in the Superior Court against the defendant county commissioners, seeking a declaratory judgment, mandamus, and injunctive relief requiring the defendants to approve his request to hire a chief information officer.³

³ The plaintiff subsequently amended his complaint to include the defendant county commissioners' failure to provide the registry of deeds with the funding mandated by G. L. c. 64D, §§ 11 and 12. On the first day of each month, 10.625 percent of the taxes collected in the county are transmitted to a "Deeds Excise Fund." See G. L. c. 64D, § 11. "[N]ot less than 40 per cent [of the Deeds Excise Fund] shall be disbursed and expended for the automation, modernization and operation of the registries of deeds." G. L. c. 64D, § 12 (a).

b. Budget requests. On May 11, 2022, the Norfolk County advisory board adopted Norfolk County's budget for fiscal year 2023 (FY 2023), which ran from July 1, 2022, to June 30, 2023. The allocation for the registry of deeds included six main budget groups. One such main group, "Main Group 2 -- Contractual Services," included, *inter alia*, the following subclasses: "legal fees," "computer hardware," "misc. contractual services," "misc. prof. & technical services," "travel out of state," and "travel in state." The subclasses "legal fees" and "computer hardware" were allocated \$7,000 and \$125,000, respectively.

On July 7, 2022, the plaintiff sent a supplemental budget request to the defendant county commissioners requesting an additional \$60,000 for legal fees. On September 14, 2022, the advisory board on county expenditures approved an additional \$20,000 for legal fees. The plaintiff made a second supplemental request on September 22, 2022, for an additional \$75,000 for legal fees to fund the personnel litigation.

On the day before the plaintiff made his second supplemental budget request for additional funds, he made the first of four contested requests to transfer funds within the Contractual Services main group. On September 21, 2022, the first assistant register of deeds submitted a request on behalf of the plaintiff to the county director, seeking the transfer of

\$1,500 each from both Contractual Services subclasses "travel out of state" and "travel in state" to a third Contractual Services subclass, "misc. contractual services." The request stated that it was the plaintiff's opinion that the request was "of public necessity and a matter of convenience." The county director did not approve the request. On October 11, 2022, the plaintiff sent an additional three requests to the county director to transfer funds between subclasses within the Contractual Services main group. The plaintiff requested the transfer of \$75,000 from the "computer hardware" subclass to the "legal fees" subclass, \$18,000 from the "computer hardware" subclass to the "misc. contractual services" subclass, and \$32,000 from the "computer hardware" subclass to the "misc. prof. & technical services" subclass. These transfer requests represented the entirety of the funds allocated to the computer hardware subclass for FY 2023. In each request, the plaintiff cited to G. L. c. 35, § 32, and stated: "It is my opinion that this request is of a public necessity and a matter of convenience." On October 17, 2022, the county director sent an e-mail message to the plaintiff to request a justification for the "public necessity" and "convenience." The plaintiff did not provide an explanation.

c. Transfer request litigation. On October 21, 2022, the plaintiff brought a second suit in the Superior Court against

the defendant county commissioners and county director, seeking declaratory, mandamus, and injunctive relief requiring the defendants to make the four requested budget transfers. The plaintiff sought a preliminary injunction, which a judge of the Superior Court denied, finding that the plaintiff failed to show a substantial likelihood of success on the merits.

The defendants filed a motion to consolidate the suits, which was allowed. The plaintiff moved for judgment on the pleadings and summary judgment as to the budget transfers, and the defendants cross-moved for summary judgment. After a hearing, a different judge of the Superior Court granted summary judgment in favor of the plaintiff, concluding that the defendants were obligated to comply with the plaintiff's budget transfer requests, which satisfied the relevant statutory requirements.

The defendants timely filed a notice of appeal. The grant of summary judgment as to the budget transfers was stayed pending appeal, and the defendants' motion for reconsideration was denied. We transferred this case *sua sponte* from the Appeals Court. Proceedings in the personnel litigation are ongoing in the Superior Court.⁴

⁴ On June 28, 2024, a judge of the Superior Court found largely in favor of the plaintiff on the parties' cross-motions for summary judgment. On August 13, 2024, the defendants filed a motion for reconsideration, which was denied on August 26,

2. Discussion. At issue is whether the plaintiff was required to provide further justification for "his opinion" that "public necessity" and "convenience" necessitated the transfer of appropriated funds between subclasses within a main group. In this case, the main group was "Main Group 2 -- Contractual Services." The relevant statute directs that transfers within this main group may be made by the authorized official "whenever in his opinion public necessity and convenience so requires" (emphasis added). G. L. c. 35, § 32. Because the unambiguous statutory language does not mandate that the authorized official provide further justification for his opinion, we hold that the defendants' interference with the requested transfers was unlawful and that the plaintiff was entitled to summary judgment.

a. Standard of review. "An appellate court reviewing a grant of summary judgment examines its allowance de novo and from the same record as the motion judge." Meyer v. Veolia Energy N. Am., 482 Mass. 208, 211 (2019). "Summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a

2024. No notice of appeal was filed. On December 17, 2024, the plaintiff filed motions to further amend the complaint and for separate and final judgment, both of which the defendants opposed. A motion hearing was held on January 28, 2025, and the defendant subsequently filed a notice of intent to file a motion to dismiss on January 30, 2025.

matter of law." Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group, 469 Mass. 800, 804 (2014). Questions of statutory interpretation are "pure question[s] of law," also reviewed de novo (citation omitted). Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd., 483 Mass. 600, 603-604 (2019).

b. Analysis. General Laws c. 35 governs the annual budget process for counties. Section 32 addresses, *inter alia*, transfers of appropriated funds and provides, in relevant part:

"Transfers within an appropriation from one main group to another main group may be made upon written request of the authorized official of the organization unit with the written approval of the county commissioners, and copies of said request and approval shall be filed with the county treasurer; provided, however, that no transfer shall be made from the main groups 'personal services,' 'equipment,' 'structures and improvements' or 'improvements to land' to another main group nor shall any transfer be made from any other main group into any of the aforementioned main groups.

"Transfers within an appropriation between classes and between subclasses within a main group may be made by the authorized official of the organization unit whenever in his opinion public necessity and convenience so requires; provided, however, that no transfer shall be made within the classes of the main groups 'personal services' or 'equipment.'" (Emphases added.)

G. L. c. 35, § 32.

No party disputes that the plaintiff is the "authorized official of the organization unit," the register of deeds. Id. Nor do the parties dispute that the transfers here are within a main group -- Contractual Services -- and that this is one of

the main groups in which transfers are allowed.⁵ The statutory language therefore expressly grants the plaintiff the discretion to transfer funds within the Contractual Services main group "whenever in his opinion public necessity and convenience so requires." Id. That is precisely what happened here. More specifically, all four of the plaintiff's requests involved transfers between subclasses within the same main group, "Main Group 2 -- Contractual Services," which is not one of the main groups within which transfers are proscribed by the statute. See id. For each request, the plaintiff stated that "it [was] [his] opinion that this request [was] of a public necessity and a matter of convenience."

The defendants argue nonetheless that when the need for a transfer is disputed, the plaintiff must provide an acceptable rationale for his opinion that the transfer is justified by public necessity and convenience. We disagree. The relevant statutory language is clear on its face and deferential to the authorized official. It is his "opinion" regarding public necessity and convenience that controls transfers within classes or subclasses of a main group. An "opinion" involves at least a degree of subjective decision-making. See Black's Law

⁵ "[N]o transfer shall be made within the classes of the main groups 'personnel services' or 'equipment.'" G. L. c. 35, § 32.

Dictionary 1126 (8th ed. 2004) ("A person's thought, belief, or inference, esp[ecially] a witness's view about facts in dispute, as opposed to personal knowledge of the facts themselves" [emphasis added]). Cf. Scholz v. Delp, 473 Mass. 242, 251 (2015), cert. denied, 578 U.S. 1023 (2016) (treating "subjective view[s]" as opinions not actionable as defamation). Although a determination of public necessity and convenience inevitably presents issues of fact, City Council of Salem v. Eastern Mass. St. Ry. Co., 254 Mass. 42, 45 (1925), it is the authorized official's opinion regarding whether the factual circumstances satisfy the requirements of public necessity and convenience that is called for by the statute.

The statute also expressly distinguishes these discretionary transfers, which are left to the "opinion" of the authorized official, from those that are prohibited or subject to further approvals by the county commissioners. Certain transfers are prohibited altogether.⁶ Others are only allowed if approved in writing by the county commissioners.⁷ In drawing

⁶ See, e.g., G. L. c. 35, § 32 ("[N]o transfer shall be made from the main groups 'personal services,' 'equipment,' 'structures and improvements,' or 'improvements to land' to another main group nor shall any transfer be made from any other main group into any of the aforementioned main groups"); id. ("[N]o transfer shall be made within the classes of the main groups 'personal services' or 'equipment'").

⁷ "Transfers within an appropriation from one main group to another main group may be made upon written request of the

these distinctions, the Legislature carefully and expressly defined the respective powers of county government officials over appropriations. We therefore reject the defendants' attempts to blur these distinctions.

To do otherwise would, as the plaintiff contends, "effectively, and, of course, inappropriately amend the statute." Acme Laundry Co. v. Secretary of Envtl. Affairs, 410 Mass. 760, 780 (1991). See Care & Protection of Rashida, 488 Mass. 217, 225 (2021), S.C., 489 Mass. 128 (2022), quoting Care & Protection of Walt, 478 Mass. 212, 223-224 (2017) (we need look no further "[w]here the meaning of the statutory language is plain and unambiguous, and where a literal construction would not 'yield an absurd or unworkable result'"). It would also invite the type of in-fighting the Legislature presciently sought to avoid, as demonstrated by this case.

Finally, we address the timing question. The defendants argue that the Superior Court judge could not order any outstanding FY 2023 transfers to be made, because FY 2023 had long since concluded. We disagree. The Superior Court judge correctly determined that the transfers should have been authorized and were not. The order provided: "to the extent

authorized official of the organization unit with the written approval of the county commissioners . . ." G. L. c. 35, § 32.

that the [FY 2023] transfers remain outstanding, the defendants are [ordered] to implement them." We interpret the order not to require that the outstanding amounts be transferred from the 2023 budget, but that any payments that should have been transferred in 2023 but were not should be specifically authorized by the defendants.⁸ And the order further provided that, going forward, "the defendants are hereby ordered to refrain from interfering with or otherwise hindering the [register of deeds's] lawful transfers within Group 2."

3. Conclusion. We hold that the plaintiff need not have provided further justification for his opinion that a transfer between classes or subclasses within the Contractual Services main group is "of public necessity and a matter of convenience" and that the refusal by the defendants to allow such transfers was unlawful. Accordingly, we affirm the grant of summary judgment in favor of the plaintiff and order that the outstanding amounts that should have been transferred per the plaintiff's requests be specifically authorized by the defendants.

So ordered.

⁸ We note that counsel for the plaintiff in the personnel litigation was allowed to withdraw because counsel was not paid.